IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12136 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

VEERBHANU DEVRAJBHAI AAHER

Appearance:

1. Special Civil Application No. 12136 of 2002

MR ASHISH H SHAH for Petitioner No. 1

MR KISHOR M PAUL for Respondent No. 1

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 23/01/2003

ORAL JUDGEMENT

Leave to amend.

2. Rule. Mr.Kishor M. Paul, the learned advocate waives service of rule. With the consent of the learned advocates, the matter is taken up for final disposal.

3. The present Special Civil Application is filed by

Gujarat State Road Transport Corporation (hereinafter referred to as "the Corporation") challenging the judgement and award in Reference (ITR) No.256 of 1990 dated 29.11.2001 passed by the learned Industrial Tribunal-I, Rajkot. The learned Member of the Industrial Tribunal was pleased to quash and set aside the order imposing penalty of stoppage of one increment with future effect and did not impose any penalty for the alleged misconduct of an accident wherein a cyclist was injured. The learned advocate Mr.Shah submitted that the learned Judge ought to have taken into consideration that in departmental inquiry the respondent workman was held guilty. The factors which are taken into consideration by the learned Judge are that in the accident, no damage is caused to the ST Bus, and that in the criminal proceedings the respondent driver was given a clean chit. The defence put forward by the respondent workman to the effect that on curve road, while taking turn the cyclist had dashed with the bus and had fallen down and sustained injury also weighed with the learned Judge. The learned Judge felt that this is a fit case wherein discretion under section 11A of the Industrial Disputes Act, 1947 is required to be exercised and punishment is required to be quashed and set aside.

4. Mr.Paul, the learned advocate submitted that there are no past incidents of accident in the service record of the respondent, therefore, the view taken by the learned Judge is just and proper and no interference is called for at the hands of this Court.

5. Taking into consideration the rival contentions in case where once negligence is proved against the driver, he must be awarded some punishment, proportionate to the gravity of the charge looking to the nature of the accident and looking to the extent of negligence which is held proved against the respondent driver. It is deemed fit that the punishment of stoppage of one increment without future effect be imposed. Therefore, the judgement and award of the Industrial Tribunal is modified to that limited extent. The petition is allowed. Rule is made absolute to the aforesaid extent only. No order as to costs.

6. Mr.Paul, the learned advocate for the respondent submitted that with the change of punishment, if any amount is payable to the respondent, the same may be paid within a reasonable time. The request is reasonable. The same is granted. The petitioner corporation is directed to pay the amount which may become payable in view of the aforesaid change of punishment within eight

weeks from the date of receipt of this judgement.

(Ravi R. Tripathi, J.)

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